

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 10525 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL

THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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SHILALEKH FLATS OWNERS ASSO. - Petitioner
Versus
TORRENT POWER A.E.C. LTD. & 3 - Respondents

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Appearance :

MR MEHUL SHARAD SHAH for Petitioner
Notice served for Respondent : 1

MR RM CHHAYA for respondent No.2
MR VM PANCHOLI for Respondent Nos. 3 & 4.

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
THE HON'BLE SMT. JUSTICE ABHILASHA
KUMARI

Date : 12/06/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

By filing the instant petition under Article 226 of the Constitution of India, the petitioner i.e. Shilalekh Flats Owners' Association, has prayed to issue an appropriate writ or order, directing the respondent No.1 i.e. Torrent Power A.E.C.Limited to grant independent domestic electric connection to each resident of Block Nos.F to M of Shilalekh Flats pursuant to the application already made by them. The petitioner has further prayed to direct the respondent No.3 i.e. Mr.Harshad Vaghela, who was Developer/Builder of Shilalekh Flats, to apply for Building Use Permission and give undertaking before this Court that he would apply to the Ahmedabad Municipal Corporation for Building Use Permission with all necessary documents. The petitioner has also prayed to direct the respondent No.2 i.e. Ahmedabad Municipal Corporation to undertake procedure and consider grant of Building Use Permission to the members of Shilalekh Flats Owners' Association according to law.

2. The petitioner is the Chairman of Shilalekh Flats Owners' Association, which is formed by the residents of Shilalekh Hindu Cooperative Housing Society. Shilalekh Flats are residential complexes constructed by Labh Construction and Industries Limited, which is being represented in the present proceedings by the respondent No.4. In all, 460 Flats are constructed in 13 Towers/High-rise Buildings. The case of the petitioner is that out of 460 Flats, approximately 300 Flats are occupied by the members and they are residing therein. Initially, Ahmedabad Electricity Company had allotted individual electric connection to the residents of Block Nos. A to E, but, residents of Block Nos. F to M were left out. The residents of Block Nos. F to M were not given electric connection on the ground that fire-safety-measures were not provided in those Blocks. The case of the petitioner was that it was the duty of the Builder/Developer to provide fire-safety-measures, and not of the occupants; whereas the case of the Builder/Developer was that the occupants were liable to install fire-safety-measures. In view of this

dispute, litigation had ensued between the parties and pursuant to the directions of the Supreme Court, work of providing fire-safety-measures was undertaken by the Builder/Developer. The petitioner has averred that the Builder/Developer, who is impleaded as respondent No.3 in the petition, has installed fire-safety-measures in Block Nos. A to M, and that the respondent Nos.3 & 4 are duty bound to make application for obtaining Building Use Permission from Ahmedabad Municipal Corporation. Under the circumstances, the petitioner has filed the instant petition and claimed reliefs to which reference is made earlier.

3. The petition was placed for admission hearing before the learned Vacation Judge, who after hearing the learned counsel for the petitioner, passed following order on May 9, 2006 :-

“Learned advocate for the petitioner seeks permission to join the Chairman of Shilalekh Hindu Cooperative Housing Society as party-respondent No.4 to this petition. Permission, as prayed for, is granted. Petitioner to carry out the amendment forthwith.

Rule returnable on 12th June, 2006. Direct Service is permitted."

4. The record shows that all the respondents are duly served. Though the respondent No.1 is duly served, it has neither appeared through its lawyer nor through a constituted agent, nor the respondent No.1 has filed reply controverting the averments made in the petition. Though Mr. R.M.Chhaya, learned counsel appears on behalf of the respondent No.2, and Mr.V.M.Pancholi, learned counsel represents the respondent Nos.3 & 4, no affidavit-in-reply is filed by any of the respondents Nos.2 to 4 controverting the averments made in the petition.

5. During the course of hearing of the petition, Mr. V.M.Pancholi, learned counsel for the respondent Nos.3 & 4 has tendered undertaking sworn on May 6, 2006 by the respondent No.3. It is ordered to be taken on the record of the petition. It reads as under :-

"I, Harshad Vaghela, Developer/Director of Labh Construction and Industries Ltd., respondent No.3 herein, do hereby state on solemn affirmation as under :-

That, I am one of the Directors of Labh Construction and Industries Ltd. The said Company is also developer, and has executed an agreement to construct Shilalekh Flats with Anand-Sagar Cooperative Housing Society, which is now known as Shilalekh Hindu Cooperative Housing Society. I am filing the present undertaking in the capacity of developer and on behalf of the above society.

That, the requisite fire-safety-measures are effectively installed in all the 13 Towers known as Shilalekh Flats and necessary certificate is also issued by Ahmedabad Municipal Corporation. Now, I as a developer and on behalf of the society, undertake to apply for Building Use Permission of all the 13 Towers within a period of one month to Ahmedabad Municipal Corporation, and I undertake to supply all necessary documents. As the construction is of the year 2000, if any variation in the sanctioned plan is pointed out by the A.M.C., then to regularize such construction, I as a developer and on behalf of the society, undertake to pay the necessary impact fees."

6. The fact that fire-safety-measures are installed in Block Nos. F to M is not in dispute. The record shows that in Block Nos. F to M of Shilalekh Flats

(Shilalekh Hindu Cooperative Housing Society), fire prevention and protection system has been installed as required by the provisions of the Bombay Provincial Municipal Corporations Act, 1949 and the Rules framed thereunder. This is quite evident from the contents of certificate issued by the competent authority which is produced as Annexure-G to the petition. As noticed earlier, the respondent No.3 has undertaken on oath before this Court that he as developer and on behalf of the society, would apply to Ahmedabad Municipal Corporation for obtaining Building Use Permission of all the 13 Towers within a period of one month with necessary documents. He has also undertaken before the Court that as construction is of the year 2000, if any variation is found in the sanctioned plan, he would apply to Ahmedabad Municipal Corporation for regularization of such construction. In view of above state of affairs, this Court is of the opinion that interest of justice would be served if following directions are issued :

(1) The respondent No.3 shall approach Ahmedabad

Municipal Corporation for seeking Building Use Permission in respect of all the 13 Towers of Shilalekh Flats (Shilalekh Hindu Cooperative Housing Society) within a period of six weeks from today.

(2) The respondent No.2 i.e. Ahmedabad Municipal Corporation is directed to consider and decide the application, which may be submitted by the respondent No.3, within four months from the date of receipt of the application.

(3) As the petitioner has already made application to the respondent No.1 for providing domestic electric connection to the residents of Block Nos. F to M of Shilalekh Flats, and paid Rs. 17.90 Lakhs, the respondent No.1 is directed to provide domestic electric connection to the residents of Block Nos. F to M of Shilalekh Flats (Shilalekh Hindu Cooperative Housing Society) within two weeks on usual terms and conditions.

(4) In case Ahmedabad Municipal Corporation is not

approached by the respondent No.3 for grant of Building Use Permission within the time stipulated in this order, or Building Use Permission applied for is refused by Ahmedabad Municipal Corporation, the Ahmedabad Municipal Corporation shall inform the respondent No.1 i.e. Torrent Power A.E.C.Limited as well as the petitioner, and thereupon the respondent No.1 shall be entitled to disconnect electricity supply given to the residents of Block Nos. F to M of Shilalekh Flats (Shilalekh Hindu Cooperative Housing Society) pursuant to this order immediately.

Rule is made absolute accordingly. There shall be no order as to costs. Direct Service is permitted.

[J.M.PANCHAL, J.]

[SMT.ABHILASHA KUMARI, J.]

(patel)